

1 Michael A. Haines, Esq. (SBN 50687)  
2 HAINES & LEA, LLP  
3 PO Box 7365  
4 Tahoe City, CA 96145  
5 Telephone: 530-583-1617  
6 Fax: 530-583-1799

7 Attorneys for Secured Creditor  
8 Tamalpais Bank

9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO

12 In Re  
13 CVRR DUBOCE, LLC,  
14 Debtor.

15 CASE NO.: 09-33832 TEC  
16 Chapter 11

17 DECLARATION OF LAWRENCE  
18 CRETAN IN SUPPORT OF MOTION TO  
19 CONTINUE STATE COURT RECEIVER  
20 AS CUSTODIAN OF CERTAIN REAL  
21 PROPERTY OF DEBTOR AND EXCUSE  
22 COMPLIANCE WITH 11 U.S.C. §§ 543(a),  
23 (b) and (c)

24 (11 U.S.C. 543(d))

25 Courtroom: Hon Thomas E. Carlson

26 **DECLARATION OF LAWRENCE CRETAN IN SUPPORT OF MOTION TO CONTINUE**  
27 **STATE COURT RECEIVER IN POSSESSION OF CERTAIN REAL PROPERTY AND**  
28 **EXCUSE COMPLIANCE WITH 11 U.S.C. §§ 543(a), (b) AND (c)**

Lawrence Cretan hereby declares as follows:

1. I am Executive Vice President/Chief Credit Officer of Tamalpais Bank  
("TamBank") and submit this Declaration in support of TamBank's Motion to Continue State

DECLARATION OF LAWRENCE CRETAN IN SUPPORT OF MOTION TO CONTINUE STATE COURT  
APPOINTED RECEIVER IN POSSESSION, CUSTODY AND/OR CONTROL OF CERTAIN REAL PROPERTY,  
ETC.

2009-33832

1 Court Receiver In Possession of Certain Real Property and Excuse Compliance with 11 U.S.C. §§  
2 543(a), (b) and (c) in this Chapter 11 case (the "Motion").

3 2. On September 25, 2006, TamBank made a loan (the "Loan") in the original  
4 principal amount of \$4,000,000 to Duboce Development, LLC ("Duboce Development"). The  
5 Loan was, and is, secured by (1) a Deed of Trust dated September 25, 2006, executed by Duboce  
6 Development and recorded October 6, 2006, in the San Francisco Assessor-Recorder's records as  
7 Document 2006-I267030-00 (the "Deed of Trust") and (2) an Assignment of Rents dated  
8 September 25, 2006, executed by the Debtor and recorded on October 6, 2006, in the San  
9 Francisco Assessor-Recorder's records as Document No. 2006-I267031-00 (the "Assignment of  
10 Rents"). A copy of the Deed of Trust containing a description of the Real Property (as defined in  
11 the Motion) is attached to this Declaration as Exhibit A. A copy of the Assignment of Rents  
12 containing a description of the Real Property is attached to this Declaration as Exhibit B.

13 3. On July 24, 2007, and unknown to TamBank, Duboce Development defaulted  
14 under the Loan by transferring title to the Real Property to the Debtor in this case without  
15 TamBank's knowledge or consent in violation of the due on sale clause of the Deed of Trust. As  
16 part of the sale Duboce Development took back a note secured by a purchase money deed of trust  
17 covering the Real Property junior to TamBank's Deed of Trust in the amount of \$2,371,272.25,  
18 thereby violating the due on encumbrance clause of the Deed of Trust. The Debtor and Duboce  
19 Development compounded the concealment by having Duboce Development manage the Real  
20  
21  
22  
23  
24

25 DECLARATION OF LAWRENCE CRETAN IN SUPPORT OF MOTION TO CONTINUE STATE COURT  
26 APPOINTED RECEIVER IN POSSESSION, CUSTODY AND/OR CONTROL OF CERTAIN REAL PROPERTY,  
ETC.

27 2009-33832

1 Property for the Debtor and continuing to make payments under the Loan so that TamBank would  
2 not be aware of the transfer of the Real Property and the terms thereof.

3 4. On account of such defaults the total unpaid balance of the Loan is now due and  
4 owing in full and not reinstatable under California law. The unpaid principal balance of the Loan  
5 as of December 1, 2009 was \$3,979,285.18. In addition, there was \$197,324.78 in accrued but  
6 unpaid interest due and owing under the Loan as of December 1, 2009. Interest accrues on the  
7 Loan at the rate of \$939.55 per day. There is also due and owing the sum of \$135,531.23 in  
8 reimbursable costs and expenses and late fees as of December 1, 2009.  
9

10 5. Because TamBank did not discover these defaults until after the Duboce  
11 Development Chapter 11 case was commenced on April 17, 2009, TamBank had not taken any  
12 action to foreclose the Deed of Trust. After receiving relief from stay in the Duboce Development  
13 case, on August 10, 2009, TamBank commenced non-judicial foreclosure proceedings under the  
14 Deed of Trust. A sale of the Real Property was scheduled for December 3, 2009, but such sale has  
15 been postponed due to the filing of this Case. Currently, the sale is set for December 15, 2009.  
16 TamBank also obtained the appointment of Susan L. Uecker as receiver of the Real Property (the  
17 "Receiver")  
18  
19

20 6. TamBank is informed and believes that the liens on the Real Property as of  
21 December 31, 2009 are as follows:

22 Delinquent Taxes \$104,044.68  
23  
24

25 DECLARATION OF LAWRENCE CRETAN IN SUPPORT OF MOTION TO CONTINUE STATE COURT  
26 APPOINTED RECEIVER IN POSSESSION, CUSTODY AND/OR CONTROL OF CERTAIN REAL PROPERTY,  
ETC.

27 2009-33832

2009/2010 1 <sup>st</sup> Installment	\$29,204.70
TamBank	\$4,312,141.19
The Debtor	\$2,371,272.25.
Total	\$6,816,662.82

The market value of the Real Property is \$4,300,000, assuming no parking, and \$5,000,000, assuming parking on the adjacent property mentioned in Paragraph 7, below. In addition costs of sale are estimated to be approximately ten percent of the purchase price. Thus, there is a negative equity of between \$2,316,662.82 and \$2,946,662.82 for the Debtor. Therefore, TamBank is informed and believes that the Debtor has no economic interest in the Real Property due to the debt to value ratio of the Real Property.

7. The situation and valuation of the Real Property is complicated by its relationship to an adjacent parcel. The Real Property has no self contained parking. There is a parcel of real property adjacent to the Real Property which may or may not be required to provide parking for the Real Property. The owner of the adjacent parcel contends that the adjacent parcel is not required to provide parking for the Real Property and has threatened to barricade the adjacent property in order to prevent parking for the Real Property. As indicated above, lack of dedicated parking for the Real Property negatively impacts the value of the Real Property. The owner of the adjacent parcel has indicated that it has no interest in negotiating with the Debtor or Duboce Development to resolve the dispute.

DECLARATION OF LAWRENCE CRETAN IN SUPPORT OF MOTION TO CONTINUE STATE COURT APPOINTED RECEIVER IN POSSESSION, CUSTODY AND/OR CONTROL OF CERTAIN REAL PROPERTY, ETC.

2009-33832

1           8.     The interests of creditors would be better served by the retention of the Receiver  
2 because:

3                   (1) The Debtor has no experience in managing the Real Property while the Receiver  
4 has.

5                   (2) The Debtor has no equity in the Real Property and, therefore, nothing that would  
6 be available for creditors other than TamBank.

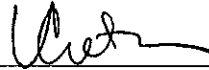
7                   (3) I am informed and believe that the parking issues cannot be resolved by the  
8 Debtor.

9                   (4) TamBank is entitled to relief from stay and will be moving for such soon. Flip-  
10 flopping the management of the Real Property will be unsettling to tenants, possibly  
11 leading to loss of some of them.

12                   (5) I am informed and believe that the Debtor has no ability to raise funds to deal  
13 with the deferred maintenance on the Real Property.

14                   I declare under penalty of perjury of the laws of the United States of America and the State  
15 of California that the foregoing is true and correct.

16                   Dated: December 10, 2009

17  
18  
19  
20                     
21                   \_\_\_\_\_  
22                   Lawrence Cretan

23  
24  
25                   DECLARATION OF LAWRENCE CRETAN IN SUPPORT OF MOTION TO CONTINUE STATE COURT  
26                   APPOINTED RECEIVER IN POSSESSION, CUSTODY AND/OR CONTROL OF CERTAIN REAL PROPERTY,  
27                   ETC.

28                   2009-33832